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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,329	09/18/2003	Thomas Richard Tepe	A01446	6250

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ROHM AND HAAS COMPANY  
PATENT DEPARTMENT  
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EXAMINER

RONESI, VICKEY M

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/665,329

Applicant(s)

TEPE, THOMAS RICHARD

Examiner

Vickey Ronesi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/29/03, 1/26/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 1-3 and 9 are objected to because the amount of ingredients in the composition is without basis, i.e., is it % based on weight or volume? Support for % by weight based on the entire composition is given on page 2, line 2-3. Please indicate such in the claim language.

Claim 3 objected to because the term "a clay" in line 2 of the claim has antecedent basis in line 6 of claim 1 and should therefore read as "the clay."

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 1, 4-6, and 10, the amount of monomer in the copolymer is without basis, i.e., is the amount of monomer based on weight % or mole %? In amending claims 1, 4-6, and 10, new matter should not be introduced.

With respect to claim 7, the term "a colloidal range" is indefinite since it is not clear what range of sizes is intended to be encompassed by the term.

With respect to claims 9 and 10, claim 9 recites the limitation "said at least one lipophilically-modified copolymer" in lines 4-5 of the claim and claim 10 recites the limitation

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“said at least one copolymer” in line 2 of the claim. There is insufficient antecedent basis for these limitations in the claims.

With respect to claim 9, the term "low-shear" is a relative term which renders the claim indefinite. The term "low-shear" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claims 2, 3, and 8 are rejected for being dependent on a rejected claim.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laryea et al (“Stabilized Shampoo/Surfactant Suspensions,” cited on IDS dated 12/29/2003) in view of Merritt et al (US 5,057,241) and either Gardlik et al (US 2002/0035070) or Dowell et al (US 5,587,154).

Laryea et al discloses a composition used as a shampoo base comprising 14.6 wt % surfactant; 0.9 wt % of Aculyn 28, a copolymer containing acrylic acid, methacrylate, and lipophilic methacrylate monomers; and 0.25 wt % of colloidal hectorite clay (page 1033).

Laryea et al fails to disclose the presently claimed amount of surfactant and the amounts of comonomer in its copolymer.

With respect to the amount of surfactant, Laryea et al only exemplifies surfactant in an amount of 14.6 wt % which is lower than the presently claimed range. Although silent, Laryea et al does not teach away from using other amounts of surfactant in its shampoo composition.

Gardlik et al also discloses a shampoo composition and teaches that surfactants are typically used in amounts ranging from 5-50 wt % and that the amount of surfactant used depends on the desired effect ([0091]).

Dowell et al discloses a shampoo composition and teaches that surfactants are typically used in amounts ranging from 3 to 40 wt % (col. 9, lines 1-19).

Given that Laryea et al discloses a shampoo composition and given the teachings by either Gardlik et al or Dowell et al regarding the typical amounts of surfactant that can be used and varied within the presently claimed range for desired effects in a shampoo composition, it would have been obvious to one of ordinary skill in the art to utilize more than the exemplified amount of surfactant in the composition of Laryea et al, thereby overlapping the presently claimed amount of surfactant.

With respect to the amounts of comonomer in Laryea et al's copolymer, Aculyn in Laryea et al is a known thickening agent in aqueous compositions. Although it is not known if Aculyn inherently has comonomer amounts such as presently claimed, Merritt et al teaches a very similar thickening agent that contains 15-60 wt % acrylic acid; 15-80 wt % of methacrylate residues; and 15-80 wt % of a nonionic vinyl surfactant ester (i.e., lipophilically modified methacrylate).

Given that Laryea et al discloses the use of a surfactant with comonomers like those disclosed in the thickening agent of Merritt et al, it would have been obvious to one of ordinary

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skill in the art to utilize the relative amounts of comonomer, which overlap the presently claimed range, as taught by Merritt et al in the surfactant of Laryea et al.

In light of the above discussion, it would have been obvious to one of ordinary skill in the art to utilize a greater amount of surfactant in the composition of Laryea et al as taught by both Gardlik et al and Dowell et al and to utilize relative comonomer amounts in the thickening agent as taught by Merritt et al and thereby arrive at a composition that would intrinsically have the presently claimed properties since a material and its properties are inseparable.

#### *Correspondence*

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vickey Ronesi whose telephone number is (571) 272-2701. The examiner can normally be reached on Monday - Friday, 8:30 a.m. - 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature, possibly reading 'VR', is written in black ink.

*Vasu Jagannathan*  
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SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700